

LABOUR MARKET RESTRICTIONS

Economic perspective: why employers are interested in labour market restrictions?

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Hard Facts

about Copenhagen Economics



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Definition for labour market restrictions



Horizontal restrictions

- Wage fixing
- No-poach agreements **between competitors**



Vertical restrictions

- No-poach clauses in **contracts between firms**
- (Non-compete clauses in employment contracts)¹

In **horizontal agreements**, two or more competitors agree on common practices.

In **vertical agreements**, restrictions are (typically) part of wider contractual arrangements and may qualify as **ancillary restraints**.

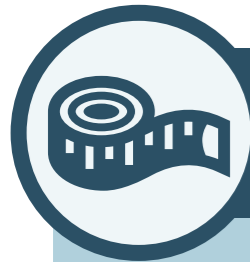
¹) Employment contracts are not regulated by competition law but by national employment law.

Why are employers interested in labour market restrictions?



Short answer

Labour market restrictions increase employer's profits and decrease uncertainty over its employees

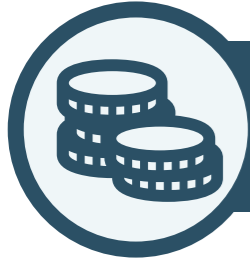


Long answer

Labour market restrictions can:

- Incentivise training by ensuring the knowledge benefits the company
- Help maintain their trade secrets and protect sensitive information
- Reduce labour costs

How can labour market restrictions impact markets?



Wage fixing



- Reduced total output from monopsony level wages
- Risk of increasing consumer prices



- Reduced risk of wage inflation
- Lower consumer prices from decreased production costs

How can labour market restrictions impact markets?



No poaching agreements and clauses



- Risk of decreasing innovation
- Non-optimal distribution of labour



- Increased incentives to invest in training
- Preservation of trade secrets and proprietary information

Earlier cases focus primarily on horizontal restrictions

Most of the cases investigated in Europe have been about horizontal restrictions.¹
In some cases, the labour market restrictions have been part of a wider infringement.

Type of labour market restriction	Number of cases	
No-poaching	8	Horizontal
Wage-fixing	3	
No-poaching and wage-fixing	1	
Labour market exclusion	2	Vertical
Contractual deferral period	1	

1) Overview based on Nordic Joint report on Competition and Labour Markets. (2024)

Example: Vertical labour market restrictions are often more limited in scope and may serve legitimate purpose



Contractual deferral period in Swedish healthcare sector

- A contractual deferral period of 12 months which forbid staffing agencies from using health care professionals for their former employer.
- The restraint was put in place to limit the cost of using temporary staff in health care and only applied to their former employees.
- No investigation by the Swedish Competition Authority despite of numerous complaints.

Considerations from an economist's perspective

The EC Policy Brief takes a strict stance on labour market restrictions, considering them by object restrictions.

Thus, it is important to make **case-by-case evaluation** on the need for restrictions.



What to ask yourself if you consider labour market restrictions

- What is the **purpose** of the restriction?
- What **benefit** you gain from the restriction?
- Absent the restriction, would your **behaviour be different**?
- How **widely** are **restriction** used in the industry?
- Is it necessary to **include all employees** in the restriction clause?
- What are the **benefits** from the restriction for **others**?

THANK YOU!

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Appendix: Earlier cases focus primarily on horizontal collaboration

Country	Year	Case	Type of labour market restriction	Outcome
Denmark	2008	Trade association of local banks	No-poaching	Behavioural change after infringement finding
Spain	2010	Road transport	No-poaching (& price fixing on services)	Fined for infringement
Sweden	2012	Ice hockey short-term contracts	Labour market exclusion	Infringement decision annulled in Market Court
France	2017	Linoleum floor covering	No-poaching (& price fixing on services)	Fined for infringement
Finland	2019	Ice hockey	Labour market exclusion	Infringement found
Lithuania	2021	Basketball	Wage-fixing	Fined for infringement
Greece	2022	Elevator installers	Wage-fixing	Behavioural change
Lithuania	2022	Real estate agencies	No-poaching	Fined for infringement
Portugal	2022	Football	No-poaching	Fined for infringement
Portugal	2022	Clinical laboratories / healthcare	No-poaching	Ongoing investigation
Poland	2022	Basketball	No-poaching	Fined for infringement
Poland	2022	Speedway competitions	Wage-fixing	Fined for infringement
Romania	2022	Engineering and technology	Wage-fixing and no-poaching	Ongoing investigation
Spain	2022	Private schools	No-poaching	Ongoing investigation
Sweden		Procurement of locum doctors	Contractual deferral period	No investigation launched